

**NORTH CAROLINA  
DURHAM COUNTY**

**CDBG Agreement  
between the City of Durham and  
McCormack Baron Salazar Development, Inc.**

**THIS AGREEMENT** is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by the City of Durham, North Carolina (“Grantee”) and McCormack Baron Salazar Development, Inc. (“Site Developer”), a corporation organized and existing under the laws of the State of Missouri.

**WHEREAS**, the Grantee competitively procured McCormack Baron Salazar, Inc., a Missouri corporation (the “Master Site Developer”), to serve as the Master Developer, itself or through its affiliated entities, of an approximately 20-acre subdivision previously known as Rolling Hills and currently known as The Lofts at Southside and related areas (the “Revitalization Area”), and in connection therewith to provide development services including, among other things, those services described herein (the “Services”); and

**WHEREAS**, the Site Developer is an affiliate of the Master Site Developer experienced in performing services of the same nature as the Services; and

**WHEREAS**, the Parties desire to enter into this Contract in order to set forth the terms and conditions pursuant to which the Site Developer will provide the Services; and

**WHEREAS**, the Grantee desires to make available to the Site Developer certain funds from the Community Development Block Grant program (CDBG) as prescribed under the Housing and Community Development Act of 1974, as amended, with said grant being made available through the U.S. Department of Housing and Urban Development (HUD) and being designated as HUD grant number B-11-MC-37-0004 and known as the “grant”; and

**WHEREAS**, the Site Developer agrees to abide by each paragraph of this Agreement and its attachments and all applicable procedures, rules and regulations imposed upon the Grantee by HUD in connection with its receiving the federal grant referenced above and

**WHEREAS**, the Site Developer is receiving CDBG funds from the Grantee in order to conduct eligible improvement activities on behalf of Grantee as set forth in 24 CFR Part 570.201 (c) and to meet the national objective for low- and moderate-income benefit activities as set forth in 24 CFR Part 570.208 (a)(2) as required by the Housing and Community Development Act of 1974.

**WHEREAS**, the Site Developer further agrees that all activities conducted under the Agreement shall be of a type authorized by the provisions of Part 8,

Article 19 of Chapter 160A of the General Statutes of North Carolina, as amended by Chapter 206 of the Session of laws of 1987.

**NOW, THEREFORE**, in consideration of the mutual promises herein exchanged by and between the parties, it is agreed as follows:

### **SECTION 1. SCOPE OF SERVICES.**

The Site Developer promises to perform, or cause to be performed, the services specified in Attachment A, entitled "Scope of Work," which is made an integral part of this Agreement, hereinafter known as the "Project." Failure to promptly provide the services specified in Attachment A, as reasonably determined solely by Grantee, shall result in the termination of this Agreement by Grantee in accordance with Section 21. Funds shall be reassigned to other projects as determined by the Grantee.

The Site Developer is an independent contractor with respect to the services to be performed under this Agreement. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of the Grantee, nor shall any such person be entitled to any benefits available or granted to employees of the City of Durham. The Grantee shall not be obligated to pay the Site Developer any payments, fees, expenses, or compensation other than the Agreement amount.

### **SECTION 2. PAYMENT UNDER THE AGREEMENT.**

Payments by the Grantee under this Agreement are limited to reimbursement of eligible expenditures made or eligible expenses incurred by the Site Developer, except where advance payments are explicitly authorized in writing by the Grantee at the sole discretion of the Grantee. Eligible expenditures for this project include a management and oversight fee to the Site Developer as set forth in Attachment A.

All expenditures and expenses shall be incurred in accordance with the provisions of this Agreement. Payments shall be made based upon this schedule and shall only be made after the Site Developer has presented documentation of expenses that meet City approval. It is expressly understood and agreed by the Site Developer that payment by the Grantee will not exceed the maximum sum of **\$1,700,108.00** for all of the services specified in Attachment A. Further, the Site Developer understands and agrees that any payment made under this Agreement by the Grantee is limited to funds made available under the grant referenced above. Grantee represents to Site Developer that it has such funds presently available and committed to the Project. The Grantee shall make payments upon receipt of a request for check from the Site Developer, documentation of expenditures and expenses incurred and work undertaken by the Site Developer, the time sheets and narrative description described in Section 13, where applicable and any other

documentation that the Director of the Department of Community Development for the Grantee, hereinafter referred to as DCD, may require from the Site Developer, with all such documentation to be in the form and substance satisfactory to DCD. Payments shall be made by the Grantee in accordance with the provisions of this Agreement and only for activities listed in Attachment A.

### **SECTION 3. PROGRAM INCOME. N/A**

### **SECTION 4. APPLICABLE, FEDERAL, STATE, AND CITY REQUIREMENTS.**

The Site Developer shall perform within and cause its subcontractors and any ultimate recipients of funds under this agreement, to comply with and be eligible under the same federal and state laws, regulations and administrative requirements, which apply to the Grantee and that are applicable to Site Developer in accordance with HUD requirements. A compilation of references, which may apply to this Agreement, is included as Attachment B. Those references, which are checked within Attachment B and that are applicable to Site Developer in accordance with HUD requirements apply to this Agreement and are made an integral part of it.

### **SECTION 5. ASSIGNMENT OF AGREEMENT PROHIBITED.**

The Site Developer shall not use this Agreement or its anticipated proceeds to borrow money. The Site Developer shall not assign any interest in this Agreement except as may be authorized or required to implement the last two sentences of Section 5.3(b) of the Master Development Agreement between the City and McCormack Baron Salazar, Inc. dated on or about the date hereof (the "MDA"). The City agrees to execute such consents, pledges, subordination agreements, licenses, estoppels or other documentation as may reasonably be required to implement such provision.

### **SECTION 6. CONFLICT OF INTEREST.**

The Site Developer shall be subject to and comply with applicable conflict of interest provisions of the CDBG regulations as published at 24 CFR Part 570.611 and 24 CFR Part 85.36..

### **SECTION 7. POLITICAL ACTIVITY.**

The Site Developer shall not permit any of the funds, materials, property or services provided under this Agreement to be used for any partisan political activity, or to further the election or defeat of any candidate for public office, or for publicity or propaganda purposes designed to support or defeat legislation pending before the United States Congress, State of North Carolina, County of Durham or the City of Durham.

### **SECTION 8. SITE DEVELOPER LIABLE FOR LEASES. N/A**

## **SECTION 9. IDENTIFICATION OF DOCUMENTS.**

All reports, maps and other documents completed as a product of this Agreement, other than documents used in the administration of the Agreement, such as reports to the Grantee, shall have placed thereon by the Site Developer the following statement:

### **NOTE**

“The preparation of this document was financed in part through funds from the City of Durham’s Community Development Block Grant Program. This grant was made available to the City of Durham under provisions of Title I of the Housing and Community Development Act of 1974, as amended, and is referred to as project number B-05-MC-370-0004.”

## **SECTION 10. FINANCIAL RECORDS.**

The Scope of Work, Budget, and other project information and procedures contained in Attachment A of this Agreement are attached to and made a part of this Agreement. The Site Developer shall establish and maintain a financial management system, which will account for all funds received under this Agreement and expenditures made in furtherance of the project and that such system shall be created and maintained in accordance with generally accepted accounting practices and procedures. The system shall include the following:

1. A general ledger (balance sheet and statement of revenue and expenses) in which to record a summary of all accounting transactions shall be maintained. In addition, the Site Developer shall maintain a cash receipt and disbursement register in which receipts and disbursements will be documented. Funds disbursed by the Site Developer shall be made by pre-numbered checks, used in numerical sequence and must be supported by appropriate documentation. This documentation includes items such as payroll, time and attendance records, invoices, contracts, travel payments, information evidencing the nature and propriety of each payment, and notation showing the approval of an authorized official of the Site Developer.
2. The Site Developer shall maintain such records and accounts, including property, personal and financial records so as to assure a proper accounting for all project funds. The Site Developer shall retain these records for five (5) years after the date of final payment under this Agreement from the Grantee to the Site Developer. Prior to this Agreement’s termination, the Site Developer shall turn these records over to the Grantee for retention after completion and acceptance of required audits.

3. On request of the Grantee, the Site Developer shall provide an accounting for all funds paid to it by the Grantee under this Agreement. More specifically, the Site Developer's financial management system shall provide for:
  - a. Accurate, current and complete disclosure of the financial results of activities under this Agreement in accordance with generally accepted business practices. If the Site Developer's accounting records are maintained on a cash basis, the Site Developer must develop information of accounts payable and accounts receivable through an analysis of the documents in the file, or on the basis of its best estimates.
  - b. Records that adequately identify the source and application of funds under this Agreement. These records shall contain information pertaining to agreement awards and authorizations, encumbrances and unencumbered balances, assets, liabilities, outlays and income.
  - c. Effective control over and accountability for all funds, property and other assets attributable to the Agreement. The Site Developer shall adequately safeguard all such assets and shall assure that they are used solely for the performance of the Agreement.
  - d. Comparison of actual expenditures with budgeted amounts for those expenditures and comparison of financial information with performance or productivity data, including the production of unit cost information whenever required by DCD.
  - e. Procedures for determining the allowability and allocability of costs.
4. The Site Developer's financial records shall be audited by a certified public accountant at least annually.
5. A copy of the certified audit of the funds received by the Site Developer under this Contract, and an accompanying Management Letter, shall be provided to the Grantee for each year in which activities under this Contract were conducted. Should there be an exception taken during any audit, the Site Developer shall resolve the findings and recommendations within thirty (30) days after completion of the audit. The foregoing requirement may be satisfied by audited financial statements of the Site Developer, supplemented as may reasonably be requested by the City to reflect funds attributable to the Agreement.
6. The Site Developer shall provide any information that DCD may reasonably request pertaining to the Site Developer's financial management under this Agreement.

## **SECTION 11. AUDITS AND INSPECTIONS.**

At any time during normal business hours and as often as the Grantee, HUD, or the Comptroller General of the United States may deem necessary, the Site Developer shall make available to the Grantee, HUD, or representatives of the Comptroller General for examination, all of the Site Developer's records with respect to matters covered by this Agreement, and the Grantee, HUD or representatives of the Comptroller shall be permitted to audit, examine and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials payable, records or personnel, and other data relative to all matters covered by this Agreement.

## **SECTION 12. FIDELITY BOND. (NA)**

## **SECTION 13. REPORTING.**

The Site Developer shall submit monthly or quarterly reports to the Grantee within seven (7) days following the closure of the month or quarter for which the activity is being reported. The appropriate reporting period and format for each Developer's activities shall be established by the Grantee in collaboration with the Developer prior to execution of the Developer's Agreement. Site Developer shall provide to the Grantee any other information determined by the Grantee to be necessary or appropriate for the proper monitoring of this Agreement. Delays by the Site Developer in making any report to the Grantee required by this Agreement may, at the Grantee's sole discretion, result in delays in payment to the Site Developer of part of all of the Site Developer's request for funds. A delay in making a disbursement by the Grantee to the Site Developer does not change the time requirements of the Site Developer to submit reports to the Grantee.

## **SECTION 14. PROOF OF AGREEMENT REQUIREMENTS.**

The Site Developer shall furnish to the Grantee, within ten (10) days after the subcontract is executed, a copy of any subcontract if it is to be funded, whole or in part, with funds provided from this Agreement. Such subcontracts shall require subcontractors to comply with all applicable federal, state and local laws and regulations. All subcontracts shall be of a form and substance acceptable to the Grantee.

## **SECTION 15. PROHIBITION AGAINST SOLICITING AND ACCEPTING FAVORS AND PROCUREMENT.**

Officials and employees of the Site Developer shall neither solicit nor accept gratuities, favors or anything of monetary value from subcontractors or potential subcontractors. The Site Developer further agrees that all procurement transactions which the Site Developer may enter into as a result of this Agreement shall be conducted in a manner so as to provide maximum, open and

free competition and in accordance with the provisions of all applicable Uniform Administrative Requirements as described in the CDBG regulations at 24 CFR Part 570.502. Site Developers engaged in procurement activities with CDBG funds are also required to maintain a contract administration system that ensures Site Developers perform in accordance with the terms, conditions and specifications of their contracts or purchase orders as described at 24 CFR Part 85.36. Notwithstanding the foregoing, the City acknowledges that those procurement transactions identified by Site Developer as required to perform the Work have previously been reviewed and approved by the City, in consultation with HUD, without being subject to 24 CFR Part 85 following the City's previous competitive procurement of the Site Developer and its affiliate, the Master Site Developer.

#### **SECTION 16. MAINTENANCE OF EFFORT.**

The Site Developer shall maintain a level of aggregate expenditures for its other projects or activities, which is not less than the level of aggregate expenditures, which existed prior to the execution of this Agreement. The Site Developer shall promptly notify the Grantee of any matters having a material tendency to affect compliance with this requirement.

#### **SECTION 17. EQUAL OPPORTUNITY.**

The Site Developer shall comply with the requirements of Attachment C as required by U.S. Executive Order 11246.

#### **SECTION 18. EMPLOYMENT OPPORTUNITIES FOR SMALL BUSINESS AND LOWER INCOME PERSONS.**

The Site Developer will take affirmative steps to assure that the small businesses and lower income persons of the project area (defined as the City of Durham) are utilized whenever possible as sources of supplies, equipment, construction and services.

#### **SECTION 19. EQUAL BUSINESS (EBO) OPPORTUNITY ORDINANCE.**

The Site Developer shall comply with all applicable provisions of Chapter 26 of the Durham City Code (the Equal Business Opportunity ordinance), as amended from time to time. It shall be the policy of the Site Developer to provide minorities and women equal opportunity to participate in all aspects of the Site Developer's contracting programs, including but not limited to employment, construction projects, and/or materials and services contracts, consistent with the law. It shall also be the policy of the Site Developer to prohibit discrimination against any business on the basis of race, color, national origin, religion, sex, age, handicap or veteran's status. The Site Developer shall conduct its contracting program so as to prevent such discrimination, correct present effects of past discrimination and to resolve claims of such discrimination.

The failure of the Site Developer to comply with Chapter 26 shall be a material breach of agreement, which may result in the rescission or termination of this agreement and/or other appropriate remedies in accordance with the provisions of that chapter, this Agreement, and State law. The final version of all SDBE documents and information submitted by the Site Developer and approved by the Grantee are a legal and binding part of this Agreement.

## **SECTION 20. RELIGIOUS ORGANIZATIONS.**

The Site Developer agrees and understands that no Community Development Block Grant funds provided under this contract shall be used for any religious activities, to promote any religious interests, or be used for the benefit of a religious organization in accordance with the Federal regulations as specified in 24 CFR 570.200(j).

## **SECTION 21. TERMINATION OF AGREEMENT.**

### **1. For Cause.**

- a. If, through any cause, the Site Developer shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Site Developer shall violate any of the covenants, agreements or stipulations of the Agreement; or if the grant from HUD under which this Agreement is made is terminated, reduced, impounded, suspended or withheld by HUD, the Grantee shall thereupon have the right to terminate this Agreement. Termination shall be accomplished by the Grantee's giving written notice to the Site Developer at least ten (10) days prior to the date that the Agreement is to be terminated. In the event HUD reduces the amount of its grant, however, the parties hereto may amend this Agreement so that it will accommodate and reflect the action taken by HUD.

The Grantee upon written notice to the Site Developer may also withhold payment of any unearned portion of the Grant if the Site Developer is unable or unwilling to accept any additional conditions that may be provided by law, by executive order, by regulations or by other policy announced by HUD at any time.

If the Grantee withholds payment, it shall advise the Site Developer in the written notice what action must be taken as a condition precedent to the resumption of payments. Upon such termination the Site Developer shall remit any unexpended balance of advanced payments on account of the Grant as well as such other portions of such payments previously received as determined by the Grantee to be due. The action of the Grantee in accepting any



such amount shall not constitute a waiver of any claim which the Grantee may otherwise have arising out of this Agreement.

2. For Convenience.

- a. The Agreement may also be terminated by the Grantee without cause and independently from any action by HUD pertaining to the federal grant under which this Agreement has been funded, at the convenience and the sole discretion of the Grantee. The Grantee shall provide the Site Developer with at least thirty (30) days written notice prior to the effective date of termination under this paragraph. In the event of termination for convenience, the Grantee shall make payment for the services performed and authorized expenditures incurred, if any, prior to the termination date, by the Site Developer in accordance with this Agreement. In the event of termination, all property, finished or unfinished documents, data, studies and reports purchased or prepared by the Site Developer under this Agreement, shall become the property of the Grantee and shall be delivered to the Grantee within thirty (30) days after the completion of the certified audit of this Agreement pursuant to Section 9 Part 5.

**SECTION 22. HOLD HARMLESS PROVISION.**

Relative to the performance of activities under this Agreement, the Site Developer shall be subject to the indemnification provisions established in Section 9.2 of the MDA.

**SECTION 23. REVERSION OF ASSETS.**

The City will have the same ownership interest in any documents, plans, designs, renderings prepared, or services performed under the Scope of Work of this Agreement as the Site Developer or Owner shall have, including but not limited to any work completed or undertaken and not yet complete.

**SECTION 24. CITY DISCRIMINATION POLICY.**

The City of Durham opposes discrimination on the basis of race and sex and urges all of its Site Developers to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under City contract.

**SECTION 25. ENVIRONMENTAL REVIEW REQUIREMENT.**

An environmental review must be completed prior to the commencement of any activities/projects, and prior to the commitment of any funds. Agreements shall not be executed until an environmental review has been completed. 24 CFR 58.22 (a) states that a recipient may not commit HUD assistance funds

under a program listed in 58.1(b) on an activity or project until HUD or the State has approved the recipient's Request for the Release of Funds (RROF) and the related certification or the responsible entity. In addition, until the RROF and related certification has been approved, the recipient may not commit non-HUD funds on an activity or project under a program listed in 58.1 (b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives. If an activity is exempt under 58.34, or not subject to 58.5 under 58.35 (b), no RROF is required and a recipient may undertake the activity immediately after the award of the assistance. Additionally, 24 CFR 58.30 (b), states that the environmental review process should begin as soon as a recipient determines the projected use of HUD assistance. The City received the RROF authorizing the City to use Grant funds for Rolling Hills/Southside Redevelopment Area on April 4, 2011.

## **SECTION 26. SOLE AGREEMENT.**

This document, and the attachments incorporated herein, contain the entire agreement between the parties with respect to the subject matter of this agreement and no statement, promises or inducements made by either party, or representative of either party with respect to the subject matter of this agreement, that is not contained in this written agreement, shall be valid and binding. This Agreement may not be enlarged, modified or altered except in writing by all the parties.

## **SECTION 27. RECORDS TO BE MAINTAINED**

The Site Developer shall maintain all records required by the Federal regulations specified in 24 CFR 507.506 that are pertinent to the activities to be funded under this agreement. These records shall be retained for a period of three years beginning at the time the Site Developer receives notice in writing from the Grantee that this project is complete. Such records shall include, but not be limited to:

- a. This agreement and any amendments;
- b. 24 CFR Part 570 regulations;
- c. Records providing a full description of each activity undertaken;
- d. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- e. Records documenting compliance with the Fair Housing and Equal Opportunity components of the CDBG Program;
- f. Financial records as required by 24 CFR Part 570.502, OMB Circular A-110, and OMB Circular A-122.

Other records necessary to document compliance with Subpart K of 24 CFR 570

## **SECTION 28. E-VERIFY COMPLIANCE**

The Site Developer represents and covenants that the Site Developer and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the

North Carolina General Statutes (NCGS). The City is relying on this E-Verify Compliance section in entering into this contract. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this contract comply with NCGS 160A-20.1(b).

**SECTION 29. ACCESS TO SITE.**

The Grantee hereby gives the Site Developer access to the Revitalization Area (or portions thereof subject to control by the Grantee) so as to allow the Site Developer to undertake and accomplish its responsibilities under this Contract.

**IN TESTIMONY WHEREOF**, the parties hereto have caused this Agreement to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF DURHAM**

By \_\_\_\_\_  
City Manager

**ATTEST:**

**CITY OF DURHAM**

\_\_\_\_\_  
City Clerk

**McCormack Baron Salazar Development,  
Inc.**

By \_\_\_\_\_  
Kevin McCormack, President

**ATTEST:**

\_\_\_\_\_  
Secretary

(Affix corporate seal here)

**NORTH CAROLINA  
DURHAM COUNTY**

I, a Notary Public in and for the aforesaid County and State certify that \_\_\_\_\_ personally appeared this day, and acknowledged that he or she is the \_\_\_\_\_ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract or agreement was signed in its corporate name by its City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My Commission Expires

\_\_\_\_\_

**STATE OF MISSOURI  
COUNTY OF ST. LOUIS**

I, a Notary Public in and for the aforesaid County and State, certify that \_\_\_\_\_ personally appeared before me this day and stated that he or she is Secretary of McCormack Baron Salazar Development, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing contract or agreement with the City of Durham was signed in its name by its President, whose name is Kevin McCormack, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My Commission Expires

\_\_\_\_\_

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act. This the \_\_\_\_\_ day of \_\_\_\_\_ , 2016.

\_\_\_\_\_

Finance Officer

## **ATTACHMENT A**

### **Scope of Work**

#### **LOCATION**

The area is approximately 11.66 acres and is bound by the area north of the southern right of way of Piedmont Ave., east of the western right of way of South Roxboro Street, south of the northern right of way of Chestnut Street and south of the completed Phase 1 Building 12.

#### **CONSTRUCTION SCOPE OF WORK**

Funds awarded under this agreement will be used for the installation of sedimentation and erosion control measures and site activities to include but not limited to mass grading of the 11.66 acre site, site preparation and installation of new streets and infrastructure necessary to serve the Phase 2 development which consists of approximately seven acres to include sidewalk, storm drainage, water distribution and sanitary sewer collection, street trees, as well as coordination with private utilities for street lights and future utility services. It also includes like improvements to serve the future development on the remaining site. The "Construction Scope of Work" is described more particularly in the construction documents attached to or referenced in the form of construction contract between Site Developer and D.H. Griffin Infrastructure, LLC (the "Contractor") attached as Attachment D (the "Construction Contract"). The City has approved the form and content of the Construction Contract, including the contract amount of \$3,500,000.00 and has approved the identity of the Contractor, which was selected as the lowest responsible bidder pursuant to a process previously approved by the City. Construction is scheduled to begin by April 15, 2016 with a 180 day overall completion schedule, subject to extension by Site Developer in accordance with the terms of the Construction Contract or otherwise with the prior written approval of the City.

The Site Developer will be responsible for managing the day to day activities of the Construction Scope of Work and for overseeing 3<sup>rd</sup> party professional service providers which will provide specific construction management services and will earn a management fee in the amount of 9% of construction costs. The management fee will be paid pro rata to construction and 3<sup>rd</sup> party costs approved and submitted with each monthly draw.

## **ADDITIONAL SERVICES SCOPE OF WORK**

The Site Developer is responsible for managing certain third-party professionals and consultants in the delivery of the “Additional Services” summarized below:

### **1. Civil Engineering and Geotechnical Services**

Landdesign, which produced the construction drawings and specifications, will be responsible for providing general construction management and oversight activities to ensure the work is completed per plans and specifications. In addition under a subcontract, Summit Engineering will provide engineering and testing services to include project management and professional engineering support required to prepare and submit necessary testing and inspections reports, on-call project management and professional engineering consultation support as requested for items that may arise during construction including special reports and engineering recommendations for unforeseen site or construction difficulties. In addition, Summit Engineering will monitor proof rolling of exposed soils prior to fill placement to locate areas which may require undercutting; perform laboratory classification tests to determine engineering properties of proposed soils to be used as fill material; Perform laboratory Proctor compaction tests on proposed soils to be used as fill material; Perform in-place field density tests to verify the degree of compaction of fill soils; Monitor quantities of undercutting, and rock and debris removal.

### **2. SDBE and Section 3 Coordination and Compliance Services**

Right Build, Inc. will provide SDBE, Section 3 and Davis Bacon Monitoring and compliance services. Right Build, Inc. will be responsible for conducting on-site interviews for Davis Bacon compliance which will occur at least once a month from the contract start date until the end date.

In an effort to employ individuals from the City of Durham and from the Section 3 service area, the general contractor and/or subcontractors must incorporate a Section 3 plan and notify the SDBE and Section 3 Coordinator of any employment opportunities that become available. The following process shall be included in the general contractors and/or subcontractors hiring process for potential new employees. The general contractor and/or subcontractors must first research the City of Durham’s Section 3 database with a focus on individuals from the Southside community. If qualified individuals from the Southside community are not available in the database then the general contractor and/or subcontractor is to research the database for individuals in the Section 3 service area. If qualified individuals are not available in the Section 3 service area, then the general contractor and or subcontractors must research the City of

Durham's Job Link database for potential employees. After all of the above has been exhausted through a documented process, the general contractor and/or subcontractor can open up the notification process to the general public.

### 3. Vertical Contractor Coordination Services

WeaverCooke, which has been selected as the Phase 2 vertical contractor, shall meet on site with the project team and Contractor twice a month to discuss any issues and coordinate the site prep and public infrastructure work with the vertical construction work, and be otherwise available for teleconferences between site meetings.

## **BUDGET AND DISBURSEMENTS**

Below is a summary of the total costs included in the CDBG Agreement (the "Budget").

<b>Phase II Site Preparation and Infrastructure Budget</b>	
Construction Scope of Work	\$3,500,000
Contingency 15%	525,000
Developer Management Fee	304,969
Civil/Construction Administration and Testing	79,196
Maintenance Bonding LOC	25,064
Section 3 Coordination	20,000
General Contractor Vertical Oversight and Coordination	5,500
<b>Total</b>	<b>\$4,459,729</b>

<b>Sources</b>	
Community Development Block Grant	\$1,798,108
Housing Bond Program Income	1,767,754
Dedicated Housing Fund, Includes Contingency	991,866
<b>Total</b>	<b>\$4,459,729</b>

Adjustments to the Budget up to 10% of the contract amount (including expenditure of the contingency) may be approved in writing by the Director of DCD, provided these adjustments do not extend the term of the contract or increase the total funding for contract activities.

Acting as Agent for the City, the Site Developer will submit monthly draw requests to Community Development based on the completed activity on the Phase II site. Upon approval of the monthly draw request, the City will forward payment to MBS who in return will pay D. H. Griffin Infrastructure, LLC for their completed activities. MBS will forward a copy of the completed financial transaction to the City for its records. Requests relating to Construction Scope of



Work will include an approved Certificate of Payment for completed work on the site as specified in the Schedule of Values (Attachment F), a SDBE Subcontractor Report, a summary of Section 3 activity for the previous month and certified payrolls of the contractor and subcontractors. The City will fund draw requests within not more than 30 days: failure to do so will entitle Site Developer to suspend activities after ten (10) days further written notice to the City and, if applicable, to increase the Budget by damages incurred as a result of such action and/or costs required to resume work.

Site Developer will submit on a timely basis all change order requests that are acceptable to Site Developer to the City for review and approval. The City will respond to such submission within one business day for change orders with a dollar amount of up to \$25,000, and within two business days for change orders with a dollar amount above \$25,000. Failure to respond within such periods shall constitute deemed approval of the requested change by the City.

The site preparation and infrastructure improvements will be financed with multiple funding sources. Below is a schedule of values and projected costs associated with the expenditure of CDBG funds. This is a projection of costs associated with the expenditure of CDBG funds and may change as the project begins and moves toward completion.

## **ATTACHMENT B**

### **Certifications and Compliance Requirements**

- ☐ 1. 24 CFR Part 85 Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally recognized Indian Tribal Governments.
- ☒ 2. Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-7), and as supplemented by Department of Labor regulations (29 CFR, Part 5).
- ☐ 3. Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by the Department of Labor regulations (29CFR, Part 5).
- ☒ 4. Title VI of the Civil Rights Act of 1964 (PL88-352) and regulations issued pursuant thereto (24 CFR Part 1) on nondiscrimination in Federally assisted programs.
- ☒ 5. Section 109 of the Housing and Community Development Act of 1974 and regulations issued pursuant thereto (24 CFR Part 570.612 et seq., known as subpart K)
- ☒ 6. Executive Order 11246 and the regulations issued pursuant thereto (24 CFR Part 130 and 41 CFR Chapter 60) on nondiscrimination in employment.
- ☒ 7. Copeland "Anti-Kick Back" Act (18 U.S.C. 874).
- ☒ 8. Section 3 of the Housing and Urban Development Act of 1968, as amended for training and employment of lower-income residents of projected areas and awarding of contracts.
- ☐ 9. Lead Based Paint Poisoning Prohibition (PL91-695).
- ☐ 10. North Carolina General Statutes 143-128 et seq.
- ☐ 11. Hatch Act (5 U.S.C. 1501-1508).
- ☐ 12. Building design, construction or alteration must comply with "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped" (#A-117.1-R 1971).
- ☐ 13. Executive Order 11296 relating to evaluation of flood hazard.

- ☐ 14. Title VIII of the Civil Rights Act of 1968 (PL 90-284), as amended Fair Housing Policy.
- ☐ 15. Executive Order 11063 on equal opportunity in housing and nondiscrimination.
- ☐ 16. Section 306 of the Clean Air Act (42 U.S.C. 1857(h))
- ☒ 17. Environmental Protection Agency regulations (40 CFR, Part 15).
- ☒ 18. Age Discrimination Act of 1967, as amended.
- ☐ 19. The Rehabilitation Act of 1973, as amended, Sections 503 and 504, which prohibits discrimination against the handicapped.
- ☒ 20. City of Durham's Disadvantaged Business Enterprise Plan.
- ☐ 21. OMB Circular A-122 "Cost Principles for Non-Profit Organizations"
- ☐ 22. Treasury Circular 1075 relating to the use of Community Development funds within 72 hours after drawdown.
- ☒ 3. Community Development Administrative Regulations 24 CFR 570.
- ☐ 24. N. C. Fair Housing Law
- ☐ 25. City of Durham Fair Housing Law
- ☐ 26. OMB Circular A-133 "Audits of States, Local Governments and Nonprofit Organizations"

## **ATTACHMENT C**

### *Equal Employment Opportunity* U. S. Executive Order 11246 (excerpts)

"During the performance of this Agreement, the Site Developer being referred to as Site Developer, agrees as follows:"

1. " The Site Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Site Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Site Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. "The Site Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Site Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

3. "The Site Developer will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract officer, advising the labor union or workers' representative of the Site Developer's commitments under Section 2020 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. "The Site Developer will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. "The Site Developer will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and, by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. "In the event of the Site Developer's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Site Developer may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965 or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by Law.

7. "The Site Developer will include the provisions of Paragraphs 1 through 7

in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Site Developer will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided however, that in the event the Site Developer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Site Developer may request the United States to enter into such litigation to protect the interest of the United States."

**ATTACHMENT D**

**Construction Contract**